

2005 Senate Bill 34

Date of enactment: **March 30, 2006**

Date of publication\*: **April 12, 2006**

## 2005 WISCONSIN ACT 248

AN ACT to amend 8.50 (intro.), 8.50 (1) (a) and (b), 8.50 (2) (b), 8.50 (4) (fm), 17.21 (3), 17.23 (1) (a) and (c), 17.24 (2), 17.25 (1) and 59.10 (3) (e) of the statutes; relating to: the method of filling vacancies in certain county, city, village, and town elective offices.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**SECTION 1.** 8.50 (intro.) of the statutes is amended to read:

**8.50 Special elections.** (intro.) Unless otherwise provided, this section applies to filling vacancies in the U.S. senate and house of representatives, executive state offices except the offices of governor, lieutenant governor, and district attorney, judicial and legislative state offices, county, city, village, and town offices, and the offices of municipal judge and member of the board of school directors in school districts organized under ch. 119. State legislative offices may be filled in anticipation of the occurrence of a vacancy whenever authorized in sub. (4) (e). No special election may be held after February 1 preceding the spring election unless it is held on the same day as the spring election, nor after September 1 preceding the general election unless it is held on the same day as the general election, until the day after that election. If the special election is held on the day of the general election, the primary for the special election, if any, shall be held on the day of the September primary. If the special election is held on the day of the spring election, the primary for the special election, if any, shall be held on the day of the spring primary.

**SECTION 2.** 8.50 (1) (a) and (b) of the statutes are amended to read:

8.50 (1) (a) When there is to be a special election, the special election for county clerk ~~shall be ordered by the sheriff; the special election for any other county office shall be ordered by the county clerk~~ board of supervisors except as provided in s. 17.21 (5); the special election for city office shall be ordered by the common council; the special election for village office shall be ordered by the board of trustees; the special election for town office shall be ordered by the town board of supervisors; the special election for school board member in a school district organized under ch. 119 shall be ordered by the school board; the special election for municipal judge shall be ordered by the ~~mayor, president or chairperson~~ governing body of the municipality, except in 1st class cities, or if the judge is elected under s. 755.01 (4) jointly by the ~~mayors, presidents or chairpersons~~ governing bodies of all municipalities served by the judge; and all other special elections shall be ordered by the governor. When the governor or attorney general issues the order, it shall be filed and recorded in the office of the board. When the county clerk ~~or sheriff~~ board of supervisors issues the order, it shall be filed and recorded in the office of the county clerk. When the county executive issues the order, it shall be filed in the office of the county board of

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\* Section 991.11, WISCONSIN STATUTES 2003-04 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

election commissioners. When the common council issues the order, it shall be filed in the office of the city clerk. When the board of trustees issues the order, it shall be filed in the office of the village clerk. When the town board of supervisors issues the order, it shall be filed in the office of the town clerk. When the school board of a school district organized under ch. 119 issues the order, it shall be filed and recorded in the office of the city board of election commissioners. When the mayor, president or chairperson issues the order, it shall be filed in the office of the municipal clerk or city board of election commissioners. If a municipal judge is elected under s. 755.01 (4), the order shall be filed in the office of the county clerk or board of election commissioners of the county having the largest portion of the population of the jurisdiction served by the judge.

(b) Notice of any special election shall be given upon the filing of the order under par. (a) by publication in a newspaper under ch. 985. If the special election concerns a national or state office, the board shall give notice as soon as possible to the county clerks. Upon receipt of notice from the board, or when the special election is for a county office or a municipal judgeship under s. 755.01 (4), the county clerk shall give notice as soon as possible to the municipal clerks of all municipalities in which electors are eligible to vote in the election and publish one type A notice for all offices to be voted upon within the county as provided in s. 10.06 (2) (n) and. If the special election is for a city, village, or town office, the municipal clerk shall publish one type A notice as provided under s. 10.06 (3) (f).

**SECTION 3.** 8.50 (2) (b) of the statutes is amended to read:

8.50 (2) (b) If a primary is required, the primary shall be on the day 4 weeks before the day of the special election except when the special election is held on the same day as the general election the special primary shall be held on the same day as the September primary or if the special election is held concurrently with the spring election, the primary shall be held concurrently with the spring primary, and except when the special election is held on the Tuesday after the first Monday in November of an odd-numbered year, the primary shall be held on the 2nd Tuesday of September in that year.

**SECTION 4.** 8.50 (4) (fm) of the statutes is amended to read:

8.50 (4) (fm) A permanent vacancy in the office of municipal judge may be filled by temporary appointment of the municipal governing body, or, if the judge is elected under s. 755.01 (4), jointly by the governing bodies of all municipalities served by the judge. The office shall then be permanently filled by special election, which shall be held concurrently with the next spring election following the occurrence of the vacancy, except that a vacancy occurring during the period after December 1 and on or before the date of the spring election shall

be filled at the 2nd succeeding spring election, and no such election may be held after the expiration of the term of office nor at the time of holding the regular election for the office except that the governing body of a city or village or, if the judge is elected under s. 755.01 (4), the governing bodies of the participating cities or villages may, if the vacancy occurs before June 1 in the year preceding expiration of the term of office, order a special election to be held on the Tuesday after the first Monday in November following the date of the order. A person so elected shall serve for the residue of the unexpired term.

**SECTION 5.** 17.21 (3) of the statutes is amended to read:

17.21 (3) COUNTY CLERK, TREASURER, AND SURVEYOR. In the office of county clerk, treasurer, or surveyor, by appointment by the county board for the residue of the unexpired term unless a special election is ordered by the county board, in which case the person appointed shall serve until his or her successor is elected and qualified. The county board may, if a vacancy occurs before June 1 in the year preceding expiration of the term of office, order a special election to fill the vacancy. If the county board orders a special election during the period beginning on June 1 and ending on November 30 of any year, the special election shall be held concurrently with the succeeding spring election. If the county board orders a special election during the period beginning on December 1 and ending on May 31 of the succeeding year, the special election shall be held on the Tuesday after the first Monday in November following the date of the order. A person so elected shall serve for the residue of the unexpired term.

**SECTION 6.** 17.23 (1) (a) and (c) of the statutes are amended to read:

17.23 (1) (a) In cities of the 2nd, 3rd, or 4th class, in the office of mayor, except as provided in s. 9.10, by appointment by the common council for the residue of the unexpired term unless a special election is ordered by the common council, in which case the person appointed shall serve until his or her successor is elected and qualified. In the office of alderperson, by the common council, except as provided in s. 9.10. A person so appointed shall hold office until a successor is elected and qualified. Unless otherwise ordered by the common council, a successor shall be elected for the residue of the unexpired term on the first Tuesday of April next after the vacancy happens, in case it happens no later than December 1 preceding the first Tuesday in April, but if the vacancy happens after December 1 preceding the first Tuesday in April and before that day, then the successor shall be elected on the first Tuesday in April of the next ensuing year; but no election to fill a vacancy in such office may be held at the time of holding the regular election for that office. The common council may, if a vacancy occurs before June 1 in the year preceding expiration of the term of office, order a special election to fill a vacancy to be

held on the Tuesday after the first Monday in November following the date of the order. A person so elected shall serve for the residue of the unexpired term.

(c) In the office of any other elective officer, and except as provided in s. 9.10, by appointment by the mayor subject to confirmation by the common council, for the residue of the unexpired term unless a special election is ordered by the common council, except that in case of vacancies in the office of any such officer of a 1st class city of the first class who is authorized by law to have a deputy, such deputy shall perform the duties of such office, and shall be entitled to the emoluments of such office during the remainder of the term. A person so appointed and confirmed shall hold office until a successor is elected and qualifies. The successor shall be elected as provided in par. (a).

**SECTION 7.** 17.24 (2) of the statutes is amended to read:

17.24 (2) Except as provided in s. 8.50 (4) (fm), a vacancy in any elective office in a village may be filled by special election of a successor for the residue of the unexpired term on the first Tuesday of April next after the vacancy happens, if it happens no later than December 1 preceding the first Tuesday in April, but if the vacancy happens after December 1 preceding the first Tuesday of April, then the successor shall be elected on the first Tuesday of April of the next ensuing year; but no election to fill a vacancy in the office may be held at the time of holding the regular election for the office, and if the vacancy occurs before June 1 of the year preceding the expiration of the term of office, the village board of trustees may order a special election to fill the vacancy to be held on the Tuesday after the first Monday in November following the date of the order. A person so elected shall serve for the remainder of the unexpired term.

**SECTION 8.** 17.25 (1) of the statutes is amended to read:

17.25 (1) In the town board, by the remaining supervisors and the town clerk, except when a special election is authorized under this subsection or as provided in s. 9.10, and except when the vacancy is caused by removal by the circuit judge as provided by law, which latter vacancy shall be filled by appointment by that judge. Vacancies in other elective town offices shall be filled by appointment by the town board, except as provided in ss. 8.50 (4) (fm) and 9.10, and except for vacancies caused by removal by the judge of the circuit court which latter vacancy shall be filled by that judge. Persons appointed under this subsection to fill vacancies shall hold office for the residue of the unexpired term or, if a special election is ordered to fill a vacancy, until the successor is elected and qualified, except persons appointed to fill vacancies

as members of the water or light commission, which persons shall hold office only until their successors are elected and qualify and such successors shall be elected at the annual town meeting next after the vacancy occurs if the vacancy occurs 12 days or more prior to the meeting; otherwise at the annual town meeting held in the year next succeeding; but no election to fill a vacancy in the office may be held at the time of holding the regular election for the office unless a special election is ordered to fill the vacancy at an earlier date, in which case they shall hold office until their successors are elected and qualify. Any town board having more than 3 members may, if a vacancy in the office of supervisor occurs before June 1 in the year preceding expiration of the term of office, order a special election to fill the vacancy. If the town board orders a special election during the period beginning on June 1 and ending on November 30 of any year, the special election shall be held concurrently with the succeeding spring election. If the town board orders a special election during the period beginning on December 1 and ending on May 31 of the succeeding year, the special election shall be held on the Tuesday after the first Monday in November following the date of the order. A person so elected shall serve for the residue of the unexpired term.

**SECTION 9.** 59.10 (3) (e) of the statutes is amended to read:

59.10 (3) (e) *Vacancies.* If a vacancy occurs on the board, the board chairperson, with the approval of the board, shall appoint a person who is a qualified elector and resident of the supervisory district to fill the vacancy. The successor shall serve for the unexpired portion of the term to which the person is appointed and until his or her successor is elected and qualified, unless the board orders a special election to fill the vacancy, in which case the person appointed shall serve until his or her successor is elected and qualified. The board may, if a vacancy occurs before June 1 in the year preceding expiration of the term of office, order a special election to fill the vacancy. If the board orders a special election during the period beginning on June 1 and ending on November 30 of any year, the special election shall be held concurrently with the succeeding spring election. If the board orders a special election during the period beginning on December 1 and ending on May 31 of the succeeding year, the special election shall be held on the Tuesday after the first Monday in November following the date of the order. A person so elected shall serve for the residue of the unexpired term.

**SECTION 10. Initial applicability.**

(1) This act first applies with respect to vacancies occurring on the effective date of this subsection.